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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,491	07/31/2003	David A. Skidmore	190514-1020	4397

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EXAMINER

DANIELS, MATTHEW J.

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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12/19/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/632,491

Applicant(s)

SKIDMORE ET AL.

Examiner

Matthew J. Daniels

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1732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-5, 7-20 and 22-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See the enclosed response.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Response to Arguments

1. Applicant's arguments filed 16 October 2006 have been fully considered but they are not persuasive. The arguments appear to be on the following grounds:

(a) The "as a whole" inquiry has not been refuted nor remedied, and Applicants maintain that the "as a whole inquiry" has not been used in examination.

(b) LaCroix does not show a gusset because it does not show an insert as the term is commonly understood. The references do not show gussets forming a substantially constant angle of inclination.

(c) Stucky does not provide gussets for similar reasons presented above in association with (b).

(d) There is no mischaracterization by Applicants' remarks and Applicants assert that faced with such divergent methods as presented in Stucky and LaCroix, there is no motivation to combine the references.

(e) The combination of Knipper, Rasmussen, and Wittke is inconsistent with the "as a whole" inquiry and explanation provided above.

(f) Applicants disagree with the assertion that any aspects of Claims 1 and 24 are well known.

(g) As to Claims 1-5 and 23, Applicants assert that the combination fails the "as a whole" analysis and fails to provide a motivation to combine.

(h) As to Claims 7, 8, and 9-20, Applicants assert that the combination fails to teach or suggest opposing side gussets.

(i) As to Claims 9-20, Applicants assert that a motivation to combine has not been properly established. Knipper pertains to window frames, Rasmussen deals with concrete block molds.

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2. These arguments are not persuasive for the following reasons:

(a, d) The Examiner asserts that the motivation to combine has not been addressed, and that the rejection complies with the “as a whole” requirement.

(b) LaCroix clearly teaches an insert having a triangular configuration. See Fig. 8. It also has a constant angle of inclination.

(c) The Examiner asserts that Stuckey provides a gusset. Applicants remarks appear to be drawn to the non-removability of Stuckey’s gusset as rationale for asserting that it is not a gusset.

However, it is generally held to be prima facie obvious to make separable pieces such as those of Stuckey, and secondly, Applicants’ claimed method does not require the capability to remove the gussets, and does not remove gussets as a step of the process.

(f) Applicants dispute that the aspects recited as “well known” by the Examiner are in fact well known. However, it should be noted that Applicants have not pointed out any elements which as the Examiner asserts as being well known that are not taught by the reference. The Examiner asserts that supporting evidence of the well known aspects of making masonry units is self-contained in the rejection, and the Examiner maintains his position that these elements are well known in the art.

(g) The motivation provided has not been argued, and the Examiner asserts that the invention has been considered as a whole.

(h) See Stuckey’s side gussets, Fig. 8.

(i) The Examiner asserts that the motivation given in the rejection has not been addressed.

Knipper pertains to concrete window frames (See 1:55 and elsewhere), which can be considered masonry units. Rasmussen deals with concrete block molds, which can also be considered

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masonry units. No definition of masonry units is provided that would exclude the objects of these references.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 12/15/06

MJD

ck
CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER

12/15/06